



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Norman Estates Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession. The hearing was conducted via teleconference and was attended by the landlord

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 9, 2021 and in person on December 8, 2021, in accordance with Section 89. Section 90 of the *Act* deems documents served by registered mail are to be received on the 5th day after they have been mailed. Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on April 15, 2015 for a month to month tenancy beginning on April 15, 2015 for a monthly rent of \$850.00 due on the first of each month; and
- A copy of a One Month Notice to End Tenancy for Cause issued on January 31, 2021 with an effective vacancy date of February 28, 2021 citing the tenant:

- Or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:
 - Damage the landlord's property;
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
 - Jeopardize a lawful right or interest of another occupant or the landlord;
- Or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property;
- Has not done required repairs of damage to the unit or property;
- Has assigned or sublet the rental unit without the landlord's written consent; and
- Has failed to pay a security or pet damage deposit within 30 days as required under the tenancy agreement.

During the hearing the landlord explained that despite issuing the Notice to End Tenancy in January of 2021 he did not seek an order of possession until November 30, 2021, because he had hoped to have the tenant take care of some of the issues identified in the Notice. He stated that the tenant has not changed or corrected his behaviour, and the matter is now becoming urgent as the landlord believes the tenant is endangering the property and other occupants due to hoarding behaviour.

The landlord provided documentary evidence to confirm the Notice to End Tenancy was served to the tenant in person on January 31, 2021 and that the service was witnessed by a third party. The landlord provided documentary evidence and testified that since he issued the Notice to End Tenancy, he has provided receipts to the tenant "for use and occupancy only" when the tenant pays rent each month.

The landlord also testified that the tenant believes that the Notices to End Tenancy issued by the landlord are "a joke". The landlord testified that he has issued anywhere from 3 to 6 Notices over the duration of the tenancy. He stated that he has never pursued them to obtain an order of possession.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - ii. Put the landlord's property at significant risk;
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- d) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- e) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time; or
- f) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

Section 47(4) of the *Act* allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. As such, I find the tenant had until February 10, 2021 to submit an Application for Dispute Resolution seeking to cancel the 1 Month Notice. There is no evidence before me that the tenant disputed the Notice.

However, I find that the equitable principle of *laches* operates to bar the landlord's application for an order of possession. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the landlord's inordinate delay in diligently pursuing an order of possession combined with the issuance of several other notices to end tenancy over the course of the tenancy and the manifest prejudice to the tenant that has resulted from the landlord's failure to make a timely objection warrants the denial of this application.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution, in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 03, 2022

Residential Tenancy Branch